THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION NO.2937 OF 2007

Dated 26-03-2007

Between:

M/s Balaji Surgicals … Petitioner

And

The Deputy Commissioner of
Commercial Taxes and another … Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION NO.2937 OF 2007

O R D E R *(Per the Hon'ble Sri Justice Bilal Nazki):*

The petitioner has challenged an order passed in the revision by the Deputy Commissioner of Commercial Taxes-the first respondent on 22-12-2006. This writ petition was entertained basically on the ground that the petitioner had claimed that the order in the revision was passed without hearing him. Counter-affidavit has been filed, in which it has been stated that the petitioner was given ample chance to be heard. Since there is an affidavit and counter-affidavit with regard to the controversy whether the petitioner had been given fair chance or not, we are not entering into that controversy. In this view of the matter we would have directed the petitioner to approach Appellate authority, where all these questions could be addressed, but the petitioner submitted that it would serve no purpose to go before the Appellate authority, because even on merits, the order passed in the revision cannot sustain.

Heard learned counsel for parties on merits.

The controversy relates to 'catgut sutures'. Whether 'catgut sutures' fall within Entry 208 of the First Schedule to the Andhra

Pradesh General Sales Tax Act, 1957 (for short "the Act") or they fall in the Seventh Schedule to the Act under the category of General Goods. It is nobody's case that 'catgut sutures' are used for any other purposes than surgical purposes. It is well known that these sutures are used for the purpose of closing the wounds. In the Encyclopedia Britannica, it is mentioned that 'catgut sutures' are made from sheep intestines and are absorbable in the body of human beings and therefore, they are used for closing the wounds. Hence, there is no doubt that 'catgut sutures' are used only for the purpose of closing the wounds in surgeries by the Surgeons.

Entry 208 of the First Schedule to the Act reads as under:

> *"All surgical goods including appliances and apparatus whether made of plastic or rubber including gloves, apparels, caps, adhesive plaster, dressing, gypsona, plaster of paris and bandages, Velcro pop bandages, surgical cotton, IV needles, butterfly needles, urosacks, diagnostic kits, elastro crepe bandages, gauze, lint and similar articles impregnated or coated with pharmaceutical substances put up in forms or packings."*

This Entry is an inclusive Entry, which suggests that all surgical goods would fall within this Entry for the purpose of levy of tax. According to the learned Special Standing Counsel for Commercial Taxes and according to the revisional authority, the items which are mentioned in Entry 208 of the First Schedule to the Act are the only items which can be taxed under this Entry. That is not correct view. A bare perusal of Entry 208 of the First Schedule to the Act shows that all surgical goods would fall under it and the goods mentioned in this Entry are those goods with respect to which there could be any doubt whether they are surgical goods or not. For instance, this Entry

includes surgical goods gloves, apparels, caps, dressing, gypsona, plaster of paris, cotton, butterfly needles, IV needles, urosacks, gauze. These items are such items, which have a multipurpose use. For instance, wearing apparels, caps, adhesive plaster, gypsona, plaster of paris can be used for various purposes. Therefore, the Legislature thought it proper to mention them while laying down that all surgical goods would be covered under Entry 208. Thus goods, which are used only for surgical purposes, have been mentioned in Entry 208 as "all surgical goods", but where there is doubt about their use or have multiple uses including surgical use they have been specifically mentioned. For example surgical knives and like goods, which are used in surgeries, are not mentioned in Entry 208. But nobody can say that various types of surgical knives used in surgeries are not included in Entry 208. We are fortified in our view by the judgment of the Supreme Court in ***Johnson & Johnson Limited v. Commissioner of Central Excise***[1]***.***

Since it will serve no purpose to ask the petitioner to go back to the appellate authority as according to us he has a case on merits, therefore, we allow this writ petition, quash the impugned order and hold that 'catgut sutures' are surgical goods within the meaning of Entry 208 of the First Schedule to the Act. No order as to costs.

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(Bilal Nazki,J)

Dated 26th March, 2007

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(G.Bhavani Prasad,J)

Note: Issue C.C. in ten days

(b/o)

vrn

[1] (1997) 9 Supreme Court Cases 681